No. 79-6423

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

ABBY GAIL LASSITER,

Petitioner,

v.

DEPARTMENT OF SOCIAL SERVICES
OF DURHAM COUNTY, NORTH CAROLINA,

Respondent.

ON WRIT OF CERTIORARI TO THE
NORTH CAROLINA COURT OF APPEALS

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires a state to furnish an indigent parent court-appointed counsel in a proceeding to terminate permanently and irrevocably her parental rights.

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OPINIONS BELOW

The opinion of the North Carolina Court of Appeals is reported at 43 N.C. App. 525, 259 S.E.2d 336 (1979). No opinion was written by the Supreme Court of North Carolina in denying petitioner's application for discretionary review and dismissing her appeal.

JURISDICTION

Petitioner's application for discretionary review and appeal were denied by the Supreme Court of North Carolina on January 17, 1980. Her petition for a writ of

certiorari was filed in this Court on April 16, 1980. The petition was granted by this Court on October 6, 1980. The jurisdiction of this Court rests on 28 U.S.C. § 1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment to the Constitution of the United States of America:

> . . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The pertinent statutes which this case involves are N.C. Gen. Stat. §§ 7A-289.22, 7A-289.23, 7A-289.24, 7A-289.25, 7A-289.26, 7A-289.27, 7A-289.28, 7A-289.29, 7A-289.30, 7A-289.31, 7A-289.32, 7A-289.33, 7A-300, 7A-450, and 7A-451. These are set forth in full in Appendix A, *infra*.

STATEMENT OF THE CASE

On April 10, 1978, the Durham County Department of Social Services filed a petition to terminate the parental rights of Abby Gail Lassiter wtih respect to her three and one-half year old son, William Lassiter. The petition also sought to terminate the parental rights of William Boykin, who was alleged to be the natural father of the child. The petition alleged, *inter alia*, that on May 23, 1975, the minor had been adjudicated a neglected child, in need of protection of the State, with legal custody granted to the Durham County Department of Social Services, which had subsequently placed the child in foster care. (J.A. 2).

With respect to Abby Gail Lassiter, the petition alleged that she was confined in state prison, having been convicted of second degree murder in July of 1976; that she had not had any contact with her child since December of 1975; and that without cause she had failed to establish or maintain concern or responsibility as to her child's welfare. It was also alleged that:

> . . . the mother has willfully left the child in foster care for more that two consecutive years without showing that substantial progress has been made in correcting the conditions which led to the removal of the child, or without showing a positive response to the diligent efforts of the Department of Social Services to strengthen her relationship to the child, or to make and follow through with constructive planning for the future of the child. (J.A. 2-3)

While confined in state prison, petitioner was served with a summons and a copy of the petition on April 12, 1978, but she failed to file an answer in response to the petition. (J.A. 16) On August 11, 1978 petitioner was notified by registered mail that a hearing would be conducted on August 31, 1978. Petitioner was brought to the hearing on August 31, 1978, but was not represented by counsel. The Durham County Department of Social Services was represented by its counsel, Mr. Thomas Odom. (J.A. 5. 16, 18)

Prior to the taking of testimony, the court discussed with petitioner her failure to secure representation by counsel. Petitioner stated that although she had informed officials at the North Carolina Correctional Center for Women of the pending legal action, officials at the institution had taken no action to assist her in finding legal counsel. (J.A. 16) The court ascertained that while she was in prison, petitioner had consulted with an attorney,

Thomas F. Loflin III, with respect to her criminal conviction, but she had not discussed with him the proceeding to terminate her parental rights. (J.A. 16) An affidavit filed subsequently by Thomas F. Loflin III confirms that he never discussed with petitioner any proceeding to terminate her parental rights with regard to her son, William; and that in view of petitioner's indigency, Mr. Loflin would not have been interested in representing her in the termination proceeding if she had requested that he do so. (J.A. 10-11)

At the conclusion of its colloquy with petitioner, the court determined that since petitioner had spoken with an attorney about her criminal conviction, but had failed to secure representation from him or from any other attorney with regard to the termination proceeding, the court would not appoint counsel to represent her, nor delay proceedings in order to afford her more time to obtain counsel. (J.A. 16) At the hearing the court heard evidence, found facts, and sustained the petition. (J.A. 5-7) On September 7, 1978, the court filed an order containing formal findings of fact. With respect to petitioner's non-representation by counsel, the court found specifically:

> 5. That subsequent to being served with a copy of the Summons and Petition, Abby Gail Lassiter communicated and conferred with her attorney regarding post-conviction proceedings, but did not seek counsel regarding this matter.
>
> 6. That Abby Gail Lassiter has had ample opportunity to seek and obtain counsel prior to the hearing of this matter, and her failure to do so is without just cause. (J.A. 6)

The court sustained the petition and ordered that all parental rights of petitioner and William Boykin in William Lassister be terminated.

A timely notice of appeal and exception to the District Court's failure to appoint counsel to represent petitioner were filed. (J.A. 9, 14, 15) On November 6, 1979, the North Carolina Court of Appeals unanimously affirmed the judgment of the District Court. *In the Matter of William L. Lassiter*, 43 N.C. App. 525, 259 S.E.2d 336 (1979). The court found that family integrity is a fundamental right protected by the United States Constitution. (J.A. 22) The court stated that although termination of parental rights does invade a constitutionally protected area of individual privacy, ". . . the invasion is not so serious or unreasonable as to compel us to hold that appointment of counsel for indigent parents is constitutionally mandated." 259 S.E.2d at 337. On January 17, 1980 the Supreme Court of North Carolina denied petitioner's application for discretionary review and dismissed her appeal, without opinion. (J.A. 28)

SUMMARY OF ARGUMENT

The Due Process Clause of the Fourteenth Amendment guarantees the right of all persons who are forced to protect their rights through the judicial process to a meaningful hearing conducted in a meaningful manner. Where the state infringes upon a constitutionally protected interest, this Court had interpreted the Due Process Clause to require appointment of counsel for indigent parties in civil proceedings. Numerous state and federal court decisions have specifically held that indigent parents who are the subjects of termination (or functionally analogous dependency or neglect) proceedings

have a constitutional right to representation by court-appointed counsel. In fact, North Carolina's refusal to recognize such a right conflicts with the overwhelming trend of modern authority – caselaw, statutes, model codes and standards – which favor recognition of the parent's right to representation by counsel, in abuse, neglect, and termination cases.

In determining the exact parameters of procedural safeguards required by the Due Process Clause, this Court has promulgated a three-prong standard. *Mathews v. Eldridge*, 424 U.S. 319 (1976). Application of this tripartite test to the case at bench requires a holding in favor of a right to counsel as an essential ingredient of due process.

First, the private interest at stake, the right to family integrity, has been consistently recognized by this Court as a fundamental right deserving the highest possible degree of constitutional protection. One of the principal legislative policies underlying North Carolina's legislative scheme for terminating parental rights is protection of children from unnecessary severance of their relationship with their parents. Hence, due process protections of parental rights originate also in the reasonable expectations engendered by state statute. Finally, termination proceedings based upon parental abuse or neglect always carry the possibility of criminal prosecution. Therefore, many termination cases implicate the parent's liberty interest in avoiding imprisonment; and counsel is necessary in order for the parent to make a reasoned decision whether to invoke her right to be free from self-incrimination.

Unless counsel is provided for indigent parents in termination cases, the risk of erroneous or inappropriate termination of parental rights is great. Under North Carolina law termination cases are formal, complex, adversarial proceedings in which the rules of evidence apply, and the court is required to make formal findings of fact and conclusions of law. Indigent parents, untrained in the law, are unable to present evidence, cross-examine witnesses, object to inadmissable evidence, conduct discovery, or do any of the numerous tasks which are second-nature to most lawyers. In addition, without the assistance of counsel, most parents will not know that N.C. Gen. Stat. § 7A-289.28 requires a parent to file a written answer to the petition within thirty days. Unless the parent files such a written answer, she waives her right to be notified of the termination hearing and to be present at the hearing.

Counsel for indigent parents is especially necessary because termination proceedings are generally brought by the social services department, which is represented by counsel, and which has assembled its case from governmental records compiled against the parent. The government has vast resources and has access to assistance from expert witnesses. Hence, there is a gross and inherent imbalance of expertise between the government and the impecunious parent who requires counsel to offset the resources, the power, and the legal representation of the governmental litigant. Termination cases are, therefore, clearly distinguishable from most traditional civil litigation involving only private parties which does not usually implicate fundamental rights. Without the parent's representation by counsel, it is also exceedingly likely that the termination decision will be based upon incompetent, inadmissible, and probably unreliable evidence.

The manner in which the hearing was conducted in the present case graphically illustrates why counsel is needed in termination cases. Numerous defenses were available to petitioner which she ignorantly failed to pursue. The court never made a finding, as is required by law, why the most drastic of all available alternatives – termination – was preferable to placing the child with petitioner's mother, who was ready and able to care for the child, and who was already taking care of petitioner's other children. Numerous evidentiary errors occurred. Petitioner was unable to understand the function of cross-examination, and could no effectively cross-examine the only witness who testified against her. By conducting extensive cross-examination of petitioner and the grandmother, the court impermissibly intertwined adversarial and judicial functions, thereby compromising its ability to remain neutral and objective.

This Court has never recognized expense or administrative inconvenience as a reason to deny counsel to an indigent litigant. In any event, the costs of providing counsel to indigent parents in termination cases would not be great since there are relatively few termination proceedings and the right to counsel is already guaranteed in at least thirty-five jurisdictions. Finally, since all states presently provide counsel for children in delinquency cases, and many states provide counsel for children or parents in neglect, abuse or dependency proceedings, it would be a minimal administrative inconvenience to expand these already functioning systems to include, as well, appointment of counsel for indigent parents in proceedings to terminate parental rights.

ARGUMENT

I.

THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION REQUIRES THE APPOINTMENT OF COUNSEL FOR AN INDIGENT PARENT IN A PROCEEDING TO PERMANENTLY AND IRREVOCABLY TERMINATE HER PARENTAL RIGHTS.

A. The Essence of Due Process is the Right to be Heard at a Meaningful Time in a Meaningful Manner.

Due process of law is a concept more elusive than real when a lay person is unrepresented by an attorney in a legal proceeding which, by its very nature, requires the guiding hand of counsel. In *Boddie v. Connecticut*, 401 U.S. 371 (1971), this Court held that, absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process, ". . . must be given a meaningful opportunity to be heard." *Id.* at 377. The hearing required by due process must be granted at "a meaningful time in a meaningful manner" [*Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)] and must be "appropriate to the nature of the case" [*Mullane v. Central Bank of Hanover*, 339 U.S. 306, 313 (1950)].

Boddie v. Connecticut, supra, held that an indigent person cannot be denied the opportunity to obtain a divorce simply because she is too poor to pay filing and service of process fees. As Justice Black has recognized, divorce proceedings invariably involve the custody of children; and since the state under *Boddie* must provide

funds for an indigent mother's court costs incident to a divorce,

> . . . the State should also provide her with counsel [in abuse or neglect cases] to protect her rights to something far more important to most mothers and to society – her right to custody of her children.

Kaufman v. Carter, 402 U.S. 954, 960 (1971) (Black, J. diss. from denial of cert.)

As petitioner will demonstrate, the fundamental importance of a parent's right to the care and custody of her children, combined with the formal, complex nature of termination proceedings, requires that indigent parents who are subjects of such proceedings be afforded the opportunity to be represented by counsel.

B. Where the State Infringes Upon Fundamental, Constitutionally Protected Interests, the Due Process Clause Has Been Interpreted to Require Appointment of Counsel for Indigent Parties in Civil Proceedings.

While the Sixth Amendment to the United States Constitution specifically guarantees the right to counsel in criminal cases [*Gideon v. Wainwright*, 372 U.S. 335 (1963)], this Court has also found in the Due Process Clause of the Fourteenth Amendment an independent basis for a right to counsel in non-criminal proceedings when legal representation was deemed essential to vouchsafe due process. In *In re Gault*, 387 U.S. 1 (1967), this Court rejected the "civil" characterization of a juvenile

delinquency hearing as a "feeble . . . label of convenience"[1] in holding that the Due Process Clause of the Fourteenth Amendment guarantees the right of minors to be represented by counsel in delinquency proceedings. *Id.* at 41. In its opinion this Court quoted with approval the following findings of the President's Crime Commission in its *Task Force Report* which eloquently articulates the importance of representation by counsel as a fundamental ingredient of due process.

> The Commission believes that no single action holds more potential for achieving procedural justice for the child in juvenile court than provision of counsel. The presence of an independent legal representative of the child, or of his parent, is the keystone of the whole structure of guarantees that a minimum system of procedural justice requires. The rights to confront one's accusers, to cross-examine witnesses, to present evidence and testimony of one's own, to be unaffected by prejudicial and unreliable evidence, to participate meaningfully in the dispositional decision, to take an appeal, have substantial meaning for the overwhelming majority of persons brought before the juvenile court only if they are provided with competent lawyers who can invoke those rights effectively. *Id.*, n. 65 at 38.

In *Goldberg v. Kelly*, 397 U.S. 254 (1970), this Court held, *inter alia*, that a welfare recipient has a constitutionally guaranteed right to be represented by retained counsel at a hearing to terminate her public assistance benefits. In *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), although only the limited liberty interest of a convicted

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[1] *Id.* at 50.

criminal was implicated, this Court, nevertheless, held that under some circumstances, fundamental fairness would require the state to provide, at its own expense, counsel for indigent probationers in probation revocation proceedings. *Id.* at 790.[2]

In a separate, but parallel line of cases, this Court has found in the Due Process Clause of the Fourteenth Amendment the principle that prisoners' free and full access to the courts must remain unimpaired. *Younger v. Gilmore*, 404 U.S. 15 (1971); *Johnson v. Avery*, 393 U.S. 483 (1969). Thus, in *Procunier v. Martinez*, 416 U.S. 396 (1974), this Court invalidated an administrative regulation precluding prisoners' access to law students and paralegals as inconsistent with prisoners' due process rights of access to the courts. And in *Bounds v. Smith*, 430 U.S. 817 (1977), this Court held that a prisoner's right to meaningful access to the courts requires provision of legal assistance in the preparation of habeas corpus and other writ petitions, at least when prisoners do not enjoy access to adequate law libraries.

Most recently, four justices of this Court held in *Vitek v. Jones*, 100 S. Ct. 1254 (1980), that a prisoner whom the state is seeking to transfer to a mental hospital for involuntary treatment has a constitutional right to be

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[2] In *Gagnon*, *supra*, this Court stated that, presumptively, counsel should be provided whenever the probationer alleges that he has not committed the alleged violation of probation or where he admits the violation but there are facts in justification or mitigation which are complex or otherwise difficult to develop or present. *Id.* As petitioner will discuss in Point III B and C, *infra*, termination proceedings invariably involve contested issues of fact, as well as assertions by the parent that the best interests of the child would be served by maintaining the parent-child relationship.

represented by counsel at the transfer hearing.[3] It is noteworthy that the plurality opinion of Justice White reached this conclusion although – in marked contrast to the case at bench – the hearing in *Vitek* would be administrative, rather than judicial, and involve essentially medical decisions, as compared to the explicit legal findings which must be made pursuant to statutory criteria under North Carolina law in a termination of parental rights proceeding. See N.C. Gen. Stat. § 7A-289.32.[4] Finally, although this Court has not yet resolved this issue, numerous federal district courts and courts of appeal have held that persons who are the subjects of various kinds of civil commitment proceedings enjoy a right to representation by counsel under the Due Process Clause of the Fourteenth Amendment.[5]

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[3]Although Justice Powell agreed with the plurality opinion that Jones was entitled to representation by an independent advocate, he felt that, in light of the medical issues involved, due process would be satisfied if representation were rendered by a competent non-lawyer such as a psychiatrist or other mental health professional. *Id.*, 100 S. Ct. at 1267.

[4]In *Parham v. J.R.*, 442 U.S. 584 (1979), this Court held that children who are being admitted to state psychiatric hospitals by their parents do not have a due process right to be represented by counsel, although there must be some kind of inquiry by a neutral factfinder to determine whether state statutory standards for admission of the child to a hospital have been satisfied. *Parham* is clearly distinguishable from the present case in that it involved exercise of parents' traditional decision-making and authority over their children, whereas in termination of parental rights proceedings the state is not only intruding upon the sphere of parental authority, but is actually seeking to sever entirely the parents' relationship with their child.

[5]*Sarzan v. Gaughan*, 489 F.2d 1076 (1st Cir. 1973); *Heryford v. Parker*, 396 F.2d 393 (10th Cir. 1968); *Johnson v. Solomon*,

[footnote continued]

In rejecting petitioner's constitutional claim below, the North Carolina Court of Appeals relied exclusively upon the "civil" nature of termination of parental rights proceedings. (J.A. 21-23) The court ignored the litany of caselaw, discussed above, which had found representation by counsel to be an essential ingredient of due process in civil cases where the government is seeking to deprive persons of fundamental, constitutionally protected rights and in which the hearing or other proceeding is sufficiently formal, complex, or otherwise burdensome so that assistance of counsel is essential.

C. The Decision of the North Carolina Court of Appeals is Contrary to the Overwhelming Weight of Modern Authority.

In its opinion below, the North Carolina Court of Appeals also failed to acknowledge that an overwhelming majority of the courts which have ruled on the issue have held that indigent parents do possess a constitutionally

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484 F. Supp. 278 (D. Md. 1979); *Dorsey v. Solomon*, 435 F. Supp. 725 (D. Md. 1977), *aff'd. in part*, 604 F.2d 271 (4th Cir. 1979); *Suzuki v. Quisenberry*, 411 F. Supp. 1113 (D. Hawaii 1976); *Doremus v. Farrell*, 407 F. Supp. 509 (D. Neb. 1975); *Lessard v. Schmidt*, 349 F. Supp. 1078 (E.D. Wis. 1972), *vac. and remanded on other grounds*, 414 U.S. 473 (1974), *judg. reinstated*, 379 F. Supp. 1376 (E.D. Wis. 1974), *vac. and remanded on other grounds*, 421 U.S. 957 (1975), *judg. reinstated*, 413 F. Supp. 1318 (E.D. Wis. 1976); *Lynch v. Baxley*, 386 F. Supp. 378 (M.D. Ala. 1974); *Bell v. Wayne County General Hospital at Eloise*, 384 F. Supp. 1085 (E.D. Mich. 1974); *Dixon v. Attorney General of the Commonwealth of Pennsylvania*, 325 F. Supp. 966 (M.D. Pa. 1971).

guaranteed right to representation by counsel in termination of parental rights proceedings, both at the trial level[6] and on appeal.[7] In addition, a large number of state and federal courts have held that indigent parents possess an absolute, constitutionally guaranteed right to counsel in neglect or dependency proceedings.[8] Since the principal difference between a neglect or dependency adjudication and an order terminating parental rights is the length and finality of the deprivation of parental custody, with a termination order being final and irrevocable,[9] the above-cited dependency and neglect cases would *a fortiori* support an indigent parent's due process

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[6] *United States ex rel. Reed v. Tinder*, Civ. Action No. 75-0454 (S.D. W.Va. 1975); *Matter of Chad S.*, 580 P.2d 983 (Okla. Sup. Ct. 1978); *Crist v. Division of Youth and Family Services*, 320 A.2d 203 (N.J. Super. Ct. 1974), *Danforth v. State Dept. of Health and Welfare*, 303 A.2d 794, 799 (Me. Sup. Ct. 1973); *In re Friesz*, 208 N.W.2d 259 (Neb. Sup. Ct. 1973); *In re Adoption of R.I.*, 312 A.2d 601 (Pa. Sup. Ct. 1973), *appeal on other grounds*, 361 A.2d 294 (1976), *cert. den.*, 429 U.S. 1032 (1977); *State v. Jamison*, 444 P.2d 15 (Ore. Sup. Ct. 1968) (*dictum*).

[7] *Interest of Brehm*, 3 Kan. App.2d 325, 594 P.2d 269 (1979); *Reist v. Bay County Circuit Judge*, 396 Mich. 326, 241 N.W.2d 55 (1976); *In re Welfare of Luscier*, 84 Wash.2d 135, 524 P.2d 906 (1974); *Chambers v. Dist. Court of Dubuque County*, 152 N.W.2d 818 (Iowa Sup. Ct. 1967) (*dictum*).

[8] *Davis v. Page*, 618 F.2d 374 (5th Cir. 1980), *reh. en banc granted; Smith v. Edmiston*, 431 F.Supp. 941 (W.D. Tenn. 1977); *In re Welfare of Myricks*, 85 Wash.2d 252, 533 P.2d 841 (1975); *State ex rel. Lemaster v. Oakley*, 203 S.E.2d 140 (W.Va. Sup. Ct. of App. 1974); *Crist v. Division of Youth and Family Services, supra; In re Ella B.*, 30 N.Y.2d 352, 285 N.E.2d 288 (1972).

[9] *Compare* N.C. Gen. Stat. §7A-289.33 (termination of parental rights) *with* N.C. Gen. Stat. §§7A-646 and 7A-657 (dependency, neglect, or abuse).

right to representation by counsel in a termination of parental rights proceeding.[10]

In fact, the only modern authorities which petitioner has found – other than the decision below – holding that an indigent parent is not entitled to representation by counsel in a termination, dependency, or neglect case have been substantially undermined by later decisions or statutory enactments.[11] Further indication of the critical importance of counsel is that numerous model codes, statutes, and rules require appointed counsel for indigent parents in termination of parental rights, dependency,

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[10]Three other cases hold that an indigent parent's constitutional rights to representation in a neglect or dependency case will be determined on a case-by-case basis in accordance with criteria enunciated by the appellate courts. *Cleaver v. Wilcox*, 499 F.2d 940 (9th Cir. 1974); *Brown v. Guy*, 476 F.Supp. 771 (D. Nev. 1979); *Potvin v. Keller*, 313 So.2d 703 (Fla. Sup. Ct. 1975), This approach was specifically rejected in *Davis v. Page*, 618 F.2d 374 (5th Cir. 1980), *reh. en banc granted.* Since under the so-called *Cleaver* rule the principal factors determining under what circumstances a parent will be entitled to court-appointed counsel in dependency or neglect cases are the likelihood that the child will be placed outside his parents' home and the probable duration of that removal [499 F.2d at 945], the case-by-case approach is clearly inapplicable to termination proceedings where the effects of a termination order are the permanent removal of the child from his parent's custody and the total severance of the parent-child relationship.

[11]*Compare In re Robinson*, 8 Cal.App.3d 783, 87 Cal.Rptr. 678 (1970), *cert. den. sub nom. Kaufman v. Carter*, 402 U.S. 954 (1971), and *In re Joseph T.*, 25 Cal.App.3d 120, 101 Cal.Rptr. 606 (1972), *with In re Simeth*, 40 Cal.App.3d 982, 115 Cal.Rptr. 617 (1974) [statutory grounds], and *Cleaver v. Wilcox*, 499 F.2d 940 (9th Cir. 1974); *compare also In re Cager*, 251 Md. 473, 248 A.2d 384 (1968), *with* Md. Cts. and Jud. Proc. Code Ann. §13-821.

and neglect proceedings.[12] Although they are not themselves of constitutional significance, these model codes and statutes do indicate an almost universal recognition by legal scholars and concerned professional organizations of the necessity for legal representation of parents in these cases. Finally, at least thirty-four states and the District of Columbia now provide for appointed counsel for indigent parents in termination of parental rights proceedings by statute, many of these statutes having been enacted in recent years.[13] It is, therefore, self-evident that North Carolina is at variance with the overwhelming trend of modern authority in failing to recognize petitioner's right to court-appointed counsel in a termination of parental rights case.

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[12] IJA-ABA Juvenile Justice Standards Project, *Standards Relating to Counsel for Private Parties*, Standard 2.3(b) (1980); *Uniform Juvenile Court Act*, Section 26(a) (West's Uniform Laws Ann. 1979); Katz, *Freeing Children for Permanent Placement Through a Model Act*, Section 12, 12 Fam. L. Quarterly 203, 230 (1978); Lincoln, *Model Statute for Termination of Parental Rights*, Section 7(2), 27 Juvenile Justice 3, 6 (1976); National Council on Crime and Delinquency (NCCD), *Model Rules for Juvenile Courts*, Rule 39 (1969); U.S. Dept. of HEW, Children's Bureau, *Legislative Guide for Drafting Family and Juvenile Court Acts*, Section 25(b) (1969); U.S. Dept. of HEW, Children's Bureau, *Legislative Guides for the Termination of Parental Rights and Responsibilities and the Adoption of Children*, Part II, Section 8 (1961); NCCD, *Standard Juvenile Court Act*, Section 19 (6th ed. 1959).

[13] These statutes are cited in Appendix B, *infra*, which also contains a chart describing which states provide counsel for indigent parents in termination cases, and – if so – whether by statute or judicial decision.

D. In Determining the Precise Scope of Procedural Safeguards Required by the Due Process Clause This Court Has Applied a Three-Prong Standard.

As petitioner has demonstrated, the characterization of a termination of parental rights proceeding as "civil" is only the beginning of this Court's inquiry as to " 'what process is due' in [a] particular context." *Smith v. Organization of Foster Families*, 431 U.S. 816, 847 (1977). In determining the precise scope of procedural safeguards which are required by the Due Process Clause, this Court has articulated a three-prong test:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Petitioner will now discuss each of these criteria *seriatim* and demonstrate that application of the *Mathews* test to termination of parental rights proceedings leads to the ineluctable conclusion that provision of counsel for indigent parents is constitutionally compelled.

II.

THE PRIVATE INTERESTS AT STAKE IN TERMINATION OF PARENTAL RIGHTS CASES HAVE LONG BEEN RECOGNIZED AS OF PARAMOUNT IMPORTANCE AND FUNDAMENTAL TO OUR CONSTITUTIONAL SCHEME OF ORDERED LIBERTY.

A. The Right to Family Integrity Is Among the Most Fundamental Rights Known to Man.

One of the most significant factors to be considered in determining the scope of due process protections is the nature of the private interest affected by the official act. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). In this case the state deprived petitioner permanently and irrevocably of her right to care for, nourish, raise, educate, and enjoy the companionship of her four year old child. It is scarcely possible to conceive of a right more fundamental in a constitutional sense, or one which has been more scrupulously protected by this Court.

In *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494 (1977), the Court stated:

> Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we pass down many of our most cherished values, moral and cultural. *Id.* at 503-504.

In *Moore*, *supra*, this Court recognized that a host of cases, tracing their lineage to *Meyer v. Nebraska*, 262 U.S.

390 (1923),[14] and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), have consistently acknowledged a " 'private realm of family life which the state cannot enter' [citation omitted.]" 431 U.S. at 499. In *Stanley v. Illinois*, 405 U.S. 645 (1972), this Court cited many of its prior decisions in holding that a parent's right to the care and custody of her children is fundamental to our society and entitled to the highest degree of constitutional solicitude. *Id.* at 651. Recent decisions by this Court have reached the same conclusion. *See, e.g., Parham v. J. R.*, 442 U.S. 584 (1979); *Caban v..Mohammed*, 441 U.S. 380 (1979); *Smith v. Organization of Foster Families*, 431 U.S. 817 (1977).

Many of the decisions by this Court stressing the constitutional protections afforded the family have been rendered in cases involving a single aspect of parental rights. *See, e.g., Parham v. J. R., supra*, [medical decision]; *Wisconsin v. Yoder*, 406 U.S. 205 (1972) [education and inculcation of morality]. However, in this case the state power impinges upon the entire fabric of parent-child relations since, under North Carolina law, a decision to terminate parental rights permanently and irrevocably severs the relationship between parent and

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[14] In *Meyer* this Court noted, "it has long been accepted by this Court that the liberty aspect of the Due Process Clause 'denotes not merely freedom from bodily restraint, but also the right of the individual to . . . establish a home and bring up his children.' [citation omitted.]" *Id.* at 399. In other decisions this Court has found that the right to exercise choice concerning matters of family life – such as whether or not to bear children – is a protected aspect of the right of personal privacy. *Roe v. Wade*, 410 U.S. 113, 153 (1973); *Griswold v. Connecticut*, 381 U.S. 479, 484-86 (1965) (Goldberg, J., conc.).

child. N.C. Gen. Stat. § 7A-289.32.[15] For this reason the parental rights implicated herein are not only fundamental in a constitutional sense, but, as one court found, are ". . . more precious to many people than the right to life iteself." *In re Gibson*, 483 P.2d 131, 135 (Wash. Ct. of App. 1971).

B. Most Termination of Parental Rights Cases Involve Allegations of Conduct By Parents Which, If True, Would Subject the Parents to Criminal Prosecution.

Although termination of parental rights cases are clearly civil in nature, they resemble criminal proceedings and, in some instances, lead to criminal prosecution. As Justice Black has recognized with respect to the functionally analogous abuse or neglect proceeding:

> The case by its very nature resembles a criminal prosecution. The defendant is charged with conduct – failure to care properly for her chidren – which may be criminal and which in any event is viewed as reprehensible and morally wrong by a majority of society. *Kaufman v. Carter*, 402 U.S. 954, 959 (1971) (Black, J. diss. from den. of cert.)

In North Carolina, as in every other jurisdiction,[16]

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[15] In other jurisdictions a court decision terminating parental rights similarly deprives a parent of her right to ever again regain custody of her children. Wald, *State Intervention on Behalf of 'Neglected' Children: Standards for Removal of Children From Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights*, 28 Stan. L. Rev. 623, 633 (1976).

[16] Katz, Howe, and McGrath, *Child Neglect Laws in America*, 9 Fam. L. Q. 1, Table X at 47-49 (1975).

parental rights may be terminated, based in whole or in part, upon a finding that a parent has physically abused or neglected her child. N.C. Gen. Stat. § 7A-289.32(2). In proceeding under this subsection the state necessarily must prove that the parent has physically abused or neglected her child, conduct which is a basis for criminal prosecution.[17]

Therefore, in many termination of parental rights cases not only is the integrity of the family in peril, but the parent is also confronted with the possibility of a later criminal prosecution based upon the same conduct which is at issue in the termination proceeding. For this reason many courts have found provision of counsel essential in order for the parent to make an informed decision as to whether she should testify, seek immunity, or attempt to limit her potential for self-incrimination in some other way. *See State ex rel. Lemaster v. Oakley*, 203 S.E.2d 140, 144, (W. Va. Sup. Ct. of App. 1974); *Crist v. Division of Youth and Family Services*, 320 A.2d 203 (N. J. Super. Ct. 1974); *Danforth v. State Dept. of Health and Welfare*, 303 A.2d 794, 799-800. (Me. Sup. Ct. 1973); *see also* Catz and Kuelbs, *The Requirement of Appointment of Counsel for Indigent Parents in Neglect or Termination Proceedings: A Developing Area*, 13 Jour. of Fam. Law 223, 242 (1973-74); Areen, *Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases*, 63 Geo. L. J. 887, 888 (1975). The self-incrimination problem in termination cases resembles that in *Maness v. Myers*, 419 U.S. 449 (1975), in which Justice Stewart – in an opinion joined by Justice

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[17] For example, N.C. Gen. Stat. § 14-318.4 makes child abuse a felony, and N.C. Gen. Stat. § 14-316.1 makes it a misdemeanor for a parent to contribute to the neglect of her child.

Blackmun – found that the constitutional right not to incriminate oneself encompasses the right to some advice of counsel concerning exercise of the privilege in the first instance. *Id.* at 471.

III.

THE RISK OF ERRONEOUS TERMINATION OF PARENTAL RIGHTS IS MANIFEST UNLESS COUNSEL IS AVAILABLE TO SAFEGUARD THE PARENTS' RIGHTS.

A. The Nature of the Termination of Parental Rights Proceeding

The second prong of the *Mathews* test is the risk of erroneous deprivation of the private interest, as well as the probable value of additional procedural safeguards. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Before the utility of counsel as a procedural safeguard can be fully appreciated, it is first necessary to describe how termination of parental rights cases are initiated and prosecuted under North Carolina law.

North Carolina follows the practice of at least twenty-three other states in providing for a separate termination proceeding independent of a neglect or dependency adjudication in juvenile court. Areen, *supra*, n. 213 at 929 (1975).[18] Like many other jurisdictions,[19] North Carolina also provides that a child may be adopted without parental consent when the court makes a finding

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[18] In twelve states, a court may order termination of parental rights as a disposition following a juvenile court finding that the child has been abused or neglected. Wald, *supra.*, 633-634 (1976).

[19] Areen, *supra*, at 928 n.211.

during the adoption proceeding that the parent has abandoned the child. N.C. Gen Stat. § 48.5.[20]

Under North Carolina law a proceeding to terminate parental rights is commenced by the filing of a verified petition by any of several enumerated persons or agencies, including any county department of social services or child-placing agency to whom custody of the child has been given by a court of competent jurisdiction. N.C. Gen. Stat. §§ 7A-289.24, 7A-289.25.[21] The legislative policy underlying the termination of parental rights procedure is threefold: (1) to provide a mechanism for terminating the legal relationship between parents and children when the parents have demonstrated that they will not promote the physical and emotional well-being of the children; (2) to protect children from unnecessary severance of their relationship with their parents[22] while providing a permanent

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[20]This procedure was not utilized in the case at bench, and there is no evidence in the record indicating whether petitioner's son has been, or ever will be, adopted. The sole proceeding before this Court is a separate termination of parental rights proceeding brought by the county social services agency.

[21]Statutory references are to the statutes in effect when the hearing was conducted in the case at bench on August 31, 1978. These statutes are set forth in full in Appendix A, *infra*.

[22]As the court stated in *In the Matter of Dinsmore*, 36 N.C. App. 720, 245 S.E.2d 386, 389 (1978), "Manifestly, the termination of parental rights is a grave and drastic step . . . . Parental rights are to be protected regardless of the economic situation of the individual parent." Since North Carolina case law specifically recognizes the right of parents and children alike not to have their relationship unnecessarily abrogated, this is a case where due process protections originate, not only in the constitutionally protected right to family integrity, but also in the reasonable expecta-

[footnote continued]

plan at the earliest possible age when termination is necessary; and (3) to protect the best interests of the children. N.C. Gen Stat. § 7A-289.22.

The petition must allege facts which are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exists. N.C. Gen. Stat. § 7A-289.25. These grounds are set forth in N.C. Gen. Stat. § 7A-289.32. Except when the identity or location of the parents is unknown, a summons will issue requiring the parents to answer the petition within thirty days. N.C. Gen. Stat. § 7A-289.27. If the parents fail to file a timely written answer, the court shall issue an order terminating all parental rights in the child, provided that the court first conducts a hearing at which the court may examine the movant or others about the facts alleged in the petition. N.C. Gen Stat. § 7A-289.28. If a written answer is not filed, there is no requirement that the parents be notified of the hearing date, or that they be physically present at the termination hearing. *Id.* If the parent's answer denies any material allegation in the petition, the court shall: (1) appoint a licensed attorney as *guardian ad litem* for the child; and (2) after giving at least ten days notice conduct a hearing to determine the issues raised by the petition and answer. N.C. Gen. Stat. § 7A-289.29.

In North Carolina any party may appear in a termination proceeding represented by an attorney. However, in only two specific instances are indigent parents entitled to court-appointed counsel – parents under the age of

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tions engendered by state statute. *See Vitek v. Jones*, 100 S.Ct. 1254 (1980); *Goss v. Lopez*, 419 U.S. 565 (1975); *Wolff v. McDonnell*, 418 U.S. 539 (1974).

fourteen and, effective August 23, 1979, parents with certain mental defects. N.C. Gen. Stat. § 7A-289.23 (Cum. Supp. 1980). If the case is initiated by the county department of social services, the district attorney or county attorney will represent the department in the termination proceeding.

North Carolina procedure bifurcates the court's consideration of adjudication from its consideration of disposition. N.C. Gen. Stat. §§ 7A-289.30, 7A-289.31. At the adjudicatory hearing the court hears evidence; and in order to sustain the petition it must find facts based upon a preponderance of the evidence regarding the existence of the circumstances set forth in one of the subsections of N.C. Gen Stat. § 7A-289.32.[23] The court may order the child or parent to be examined by a psychiatrist, psychologist, physician, or other suitable expert. N.C. Gen. Stat. § 7A-289.30(b). There is only one form of civil action under North Carolina law. N.C. Gen. Stat. § 1A-1, Rule 2. Hence, termination of parental rights proceedings are subject to the same rules which govern the conduct of all civil cases. N.C. Gen. Stat. § 1A-1, Rule 1. Hearsay is inadmissible, records must generally be authenticated, and the full panoply of evidentiary rules governing the admissibility of evidence are applicable. *See, e.g.*, N.C. Gen. Stat. § 1A-1, Rules 1, 43, 44, 46.

If the court determines that one or more of the grounds in N.C. Gen. Stat. § 7A-289.32 has been established by the required quantum of admissible evidence, at the

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[23]Effective June 28, 1979, the standard of proof in termination proceedings was changed from a "preponderance of the evidence" to "clear, cogent, and convincing evidence." N.C. Gen. Stat. § 7A-289.30 (Cum. Supp. 1979).

dispositional hearing the court shall issue an order terminating parental rights, unless the court further finds that the best interests of the child require maintenance of the parent-child relationship. N.C. Gen. Stat. § 7A-289.31. Irrespective of whether the court sustains or dismisses the petition, the court must make appropriate findings of fact and conclusions. N.C. Gen. Stat. §§ 7A-289.30(e); 7A-289.31 (b)(c). An order terminating parental rights completely and permanently ends all rights and obligations of the parent to the child and of the child to the parent, except that the child's right of inheritance continues until such time as the child may be adopted. N.C. Gen. Stat. § 7A-289.33.

B. If the Parent is Unrepresented by Counsel, There is a Substantial Risk of Erroneous Deprivation of Parental Rights.

As is evident from petitioner's discussion of the North Carolina termination of parental rights scheme, termination occurs in the context of a formal, adversarial proceeding in which the guiding hand of counsel is essential if indigent parents are to be provided with a meaningful opportunity to contest the allegations in the petition. Presenting evidence, cross-examining witnesses, filing an answer to the petition, locating experts or obtaining court-appointed experts, conducting discovery, objecting to evidence – these are second nature to the skilled advocate, but remain beyond the comprehension of most parents who are involved in termination of parental rights cases.[24] As this Court stated in *Gideon v. Wainwright*,

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[24] Further compounding the difficulties inherent in self-representation is the fact that most parents who are the subjects of

[footnote continued]

372 U.S. 335 (1963), in language equally applicable to parents in termination of parental rights proceedings,

> . . . in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an absolute truth. *Id.* at 344.

Without representation by counsel, uninformed, unintelligent waivers of the right to a contested hearing are likely to occur. *Cf. Carnley v. Cochran*, 369 U.S. 506 (1962). This is because under N.C. Gen. Stat. § 7A-289.28 if the parent fails to file a timely, written answer to the petition, the court shall, after conducting a hearing, terminate all parental rights without being required to examine the movant or hear other evidence. It is exceedingly unlikely that a parent, untutored in the law, would be aware of the requirement that a written answer to the petition must be filed; and even if *arguendo*, the court disposed with the requirement of a written answer, most

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termination proceedings are, like petitioner, poor and lacking in formal education. *See, e.g. Note: The Custody Question and Child Neglect Rehearings*, 35 U. of Chi. L. Rev. 478 (1968); Kay and Phillips, *Poverty and the Law of Child Custody*, 54 Cal. L. Rev. 717, 734-35 (1966); Paulsen, *Juvenile Courts, Family Court and the Poor Man, The Law of the Poor*, 370 (J. Ten Broek ed. 1966). A recent North Carolina study of parents of foster children, who are the same parents who become defendants in termination proceedings, shows that they are generally unemployed or employed in unskilled labor, have an average education level of the eighth grade, and have an average income of $6,000 for a family of four. Governor's Advocacy Council on Children and Youth, *Why Can't I Have A Home?: A Report on Foster Care and Adoption in North Carolina, 16-17 (Dec. 1978)* [hereinafter cited as Governor's Advocacy Report].

parents would find it impossible to analyze the statutory framework, apply it systematically to the case, and reacha an educated conclusion as to whether the movant has alleged a *prima facie* case justifying termination, or whether they have a legitmate defense.[25] To paraphrase from this Court's opinion in *In re Gault*, 387 U.S. 1 (1967),

> The [parent] needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. *Id.* at 35.

If a parent is not represented by counsel, it is to be anticipated that valuable judicial resources will be expended on cases that should not go to trial. If the available information suggests that the movant will experience no difficulty in establishing one of the statutory

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[25] In many cases state statutes are exceedingly vague in defining the substantive basis upon which parents' rights to the custody and control of their children may be terminated. In fact, several termination statutes have been invalidated on vagueness grounds [*Roe v. Conn.*, 417 F.Supp. 769 (M.D. Ala. 1976); *Alsager v. District Court of Polk County, Iowa*, 406 F.Supp. 10 (S.D. Iowa 1975), *aff'd on other grounds*, 545 F.2d 1137 (8th Cir. 1976); *Davis v. Smith*, 583 S.W.2d 37 (Ark. 1979)]; and the vagueness of a state termination of parental rights statute is currently before the Court. *Doe v. Delaware*, 407 A.2d 198 (Del. Sup. Ct. 1978) (partial report of decision), *prob. juris. noted* 43 U.S.L.W. 3613 (3/24/80). Where termination statutes are vaguely drafted, representation by counsel is particularly important to ensure that termination will only occur after a particularized showing of parental unfitness, and not upon the constitutionally infirm notion that termination was " 'thought to be in the children's best interests.' [citation omitted.]" *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978).

grounds for terminating parental rights, the parent's attorney may perform an invaluable role in suggesting to the parent that she concentrate on the dispositional phase where she may still seek to convince the court that termination would not be in the child's best interests. In addition, when counsel is not furnished to the parent, considerable judicial time will have to be expended in eliciting information and explaining procedures which would be familiar to an attorney.

In many states services exist which, if properly used, could prevent removal of children from their parents or assist the parents to remedy the basis for the initial removal. Such services include daycare, homemaker, facilitation and monitoring of visiting, psychiatric, nutritional, or job counseling, assistance in locating a more suitable abode, or use of an extended family member to help care for the children. It is now widely agreed that such services should be attempted before the drastic step of terminating parental rights is consummated. Wald, *supra*, 676-84; Children's Defense Fund, *Children Without Homes: An Examination of Public Responsibility to Children in Out-of-Home Care* 25-25 (1978); Note, *The Right to Family Integrity: A Substantive Due Process Approach to State Removal and Termination Proceedings*, 68 Geo. L.J. 213, 246-47 (1979); Child Welfare League of America, *New Approaches to Homemaker Services* (Rev. Ed. 1968).[26]

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[26] Under the recently enacted Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, Congress has authorized the appropriation of $266,000,000 each fiscal year to the states for the purpose of establishing, extending, and strengthening child welfare services intended, in part, to prevent unnecessary or inappropriate removal of children from their parents' custody. 42 U.S.C. §620 *et seq.*

Yet recent studies in North Carolina and elsewhere demonstrate that parents typically are not offered family reunification services after their children are placed in foster care.[27] When such services have not been utilized, counsel can frequently negotiate a plan under which family reunification services will be provided. In many instances valuable judicial resources will be conserved because termination will prove unnecessary. Even if provision of services fails to result in family reunification, the court's decision whether to terminate parental rights will not be obscured by the court's belief that the parent has been treated unfairly or that timely provision of services could have prevented the necessity for termination. *See, e.g., Interest of Walter B.*, 577 P.2d 119 (Utah Sup. Ct. 1978); *In re Susan M.*, 53 Cal. App.3d 300, 125 Cal. Rptr. 707 (1976).

When the termination petition culminates in a contested adjudicatory hearing, the risk of error if the parent proceeds without legal representation is particularly grave. A layman who is enmeshed in such a proceeding is confronted by a specialized body of law, replete with formal rules of evidence, which he can scarcely hope to understand. As occurred in the present case, the social services department is represented by an attorney who has assembled a case from welfare, probation, and police records, and who has access to expert assistance from

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[27] A North Carolina study reports that 59% of the natural parents surveyed said they received no services after their child was placed in foster care. *Governor's Advocacy Report, supra,* 48-49 (1978); see also Children's Defense Fund, *supra,* 15-21; Vasaly, *Foster Care in Five States: A Synthesis and Analysis of Studies from Arizona, California, Iowa, Massachusetts and Vermont,* note 16 at 34-35.

medical, psychological, and social work professionals. There is, therefore, ". . . a gross inherent imbalance of expertise between the parties if the parents are not represented by counsel." *In re Ella B.*, 30 N.Y.2d 352, 285 N.E.2d 288, 290 (1972); *see*, Singleman, *A Case of Neglect: Parens Patriae Versus Due Process in Child Neglect Proceedings*, 17 Ariz. L. Rev. 1055, 1080 (1975).[28] As one commentator has sagely recognized:

> Among the clearest cases of injustice in the civil process are those in which the state brings suit against an indigent and unrepresented defendant . . . in its role as . . . parens patriae. The defendant, unable because of his poverty to present his case properly, is overborne by lawyers and other litigative resources paid for out of the public treasury.

Note: *The Indigent's Right to Counsel in Civil Cases*, 76 Yale L. J. 545, 556 (1967)[29]

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[28]The parent's difficulty in representing herself is likely to be compounded by the reality that most parents who are the subjects of termination proceedings are ill-equipped to respond in terms of their intellectual and emotional resources. *Reist v. Bay County Circuit Judge*, 396 Mich. 326, 241 N.W.2d 55, 63-64 (1976); *Crist v. Division of Youth and Family Services*, 320 A.2d 203, 207 (N.J. Super. Ct. 1974).

[29]Ironically, under North Carolina law appointment of an attorney as *guardian ad litem* to protect the child's interests will frequently depend upon the parent securing representation by counsel. This is because the district court must appoint an attorney as *guardian ad litem* for the child only if the parent files a written answer denying a material allegation in the petition. N.C. Gen. Stat. §7A-289.29. Unless the parent is represented by counsel, it would appear unlikely in most cases that such written answers would be filed.

Unrepresented by counsel, a parent lacks the legal training and knowledge of evidentiary rules and courtroom procedures necessary to present her case properly in an adversary proceeding. *In re Adoption of R.I.*, 312 A.2d 601, 602-603 (Pa. Sup. Ct. 1973). For example, if a social report or hospital record is introduced against a parent, full of second or third-hand information, and couched in psychological jargon, is that report admissible? If it is admitted, how can the parent controvert its conclusions? If there are witnesses whose testimony would be helpful, how can they be compelled to appear? Psychiatric or medical evidence may be disirable or necessary, but how does an indigent parent secure the services of such an expert? If a less restrictive alternative to termination exists which has never been attempted, is a parent likely to be aware of what services or other resources exist, and to be able to present such an alternative plan to the court in a credible manner?

The answer to each of these admittedly rhetorical questions is, petitioner suggests, that indigent parents are simply not capable of adequately protecting their interests in a forum which must remain for them a hopeless mystery. The following description of a parent's conduct in a dependency proceeding is typical of most parents who are compelled to defend themselves in government initiated proceedings to deprive them of the care and custody of their children:

> Without benefit of counsel, Hilary Davis was little more than a spectator in the adjudicatory proceeding. She was ignorant of the law of evidence, and of the substantive law governing dependency proceeding. She sat silently through most of the hearing. . . .

Davis v. Page, 442 F. Supp. 258, 260 (S.D. Fla. 1977), *aff'd.* 618 F.2d 374 (5th Cir. 1980), *reh. en banc granted.*

Without provision of counsel, the likelihood that a decision to terminate parental rights will be based upon incompetent or inadmissible evidence is dramatically enhanced. The court's description of the hearing in *State v. Jamison*, 444 P.2d 15 (Ore. Sup. Ct. 1968), is also representative of the vast majority of termination proceedings where the parent is compelled to defend herself without the assistance of counsel:

> Without counsel, the informality usually associated with ex parte hearings prevailed. The juvenile court was led to proceed on the basis of incompetent evidence and evidence that had remote, if any, connection with the issues made up by the petition. . . . *Id.* at 17.

As the court aptly concluded,

> The case at bar was routine for the welfare workers and other juvenile court staff. For the indigent mother, however, the entire proceedings were incomprehensible. *Id.*

Two studies conducted in New York dramatically emphasize the difference which an attorney makes in a neglect or dependency proceeding.[30] In the first study a

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[30]Since termination hearings are at least as formal, complex, and adversarial as neglect or dependency hearings, usually being conducted in accordance with formal rules of evidence, the conclusions of these studies would, *a fortiori*, apply to termination proceedings as well.

substantial majority of 28 family court judges in New York City responding to a questionnaire indicated that a parent's failure to obtain counsel hindered the court's development of the facts and made it more difficult to conduct a fair hearing.[31] The other study contains results which are even more startling. When parents are unrepresented by counsel, the court is substantially more likely to sustain a neglect petition than when parents are represented by an attorney; and when the parents are unrepresented, there is more than twice as great a chance that the court will order the children removed from their parents' custody.[32] These studies provide strong empirical support for the proposition that when the government is seeking to deprive a parent, unrepresented by counsel, of

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[31] 66.7% of those responding stated that the parent's failure to obtain counsel in neglect proceedings hindered the court's development of the facts; 72.2% stated that it was more difficult to conduct a fair hearing; and 94.4% acknowledged as a problem the delay caused by adjournments necessary to afford parents an opportunity to secure counsel. *Representation in Child-Neglect Cases: Are Parents Neglected,* 4 Colum. J. of L. and Soc. Prob. 234, 235 (1968).

[32] This study was conducted of all neglect cases docketed in Kings County, New York during 1966. It was done by examination of court records. Where parents are unrepresented against institutional petitioners, 79.5% of the proceedings resulted in neglect adjudications, while 16.6% of the petitions were either withdrawn or dismissed. But where parents were represented by counsel, only 62.5% of the proceedings resulted in neglect findings, and 37.5% of the petitions were withdrawn or dismissed. Moreover, where neglect was found, 40.6% of the children of parents unrepresented by counsel were placed out of the home, whereas only 18.2% of children of parents represented by counsel were placed. *Representation in Child-Neglect Cases: Are Parents Neglected,* 4 Colum. J. of L. and Soc. Prob., 230, tables at 241-242 (1968).

her parental rights, the risk of error is unacceptably high.[33] *See, In re Welfare of Luscier*, 84 Wash. 2d 135, 524 P.2d 906, 908 (1974).

C. The Presence of Counsel Would Have Numerous Salutary Effects Upon the Judicial Process as Illustrated by the Hearing in the Case at Bench.

In the case at bench the order terminating parental rights found that Abby Gail Lassiter was serving a sentence of twenty-five to forty years which was imposed in July of 1976 for the crime of murder in the second degree. (J.A. 5) However, under North Carolina law neither conviction of a crime nor incarceration for a

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[33]There are three distinct types of errors which are likely to occur when a parent is unrepresented by counsel, each of which falls within the "erroneous deprivation of such interest" standard of *Mathews v. Eldridge, supra*, at 335. First, as discussed above, parents will suffer inappropriate terminations of parental rights. Second, the court's decision to terminate parental rights is likely to be based on incompetent, inadmissible, and possibly prejudicial evidence. *State v. Jamison, supra; Davis v. Page, supra; Reist v. Bay County Circuit Judge, supra.* Not only does such evidence tend to be unreliable, but, of equal significance, the parent will be deprived of a fundamentally fair termination hearing conducted in accordance with state evidentiary rules and statutory requirements. *See, In re Gault, supra*, 30, 56-57; *Jackson v. Denno*, 378 U.S. 368 (1964) [even if a defendant is guilty, his conviction cannot constitutionally be based upon an involuntary confession]. Third, the uncounselled parent will be unable to protect her right to be free from self-incrimination, and may engage in an unknowing waiver of such right. See cases and other authorities cited at p. 21-23, *supra.* Under North Carolina law, admissions made in a termination proceeding can be used against a parent in a criminal case involving child abuse or neglect, regardless of a decision to assert the privilege in the criminal trial. *See generally, State v. Ferrell*, 223 N.C. 804, 28 S.E.2d 560 (1944); *Teachey v. Woolard*, 16 N.C. App. 249, 191 S.E.2d 903 (1972), *cert. denied*, 282 N.C. 430, 192 S.E.2d 840 (1972).

lengthy perod of time is a statutory basis for termination of parental rights. N.C. Gen. Stat. §7A-289.32. As the court stated in *In the Matter of the Adoption of Maynor*, 38 N.C. App. 724, 248 S.E.2d 875 (1978),

> The fact that a parent commits a crime which might result in incarceration is insufficient, standing alone, to show a 'settled purpose to forego all parental duties.' [citation omitted.] *Id.* at 877.

Since neither conviction of a crime nor extended incarceration itself warrants termination of parental rights, respondent sought termination under N.C. Gen. Stat. § 7A-289.32(1)[34] and (3) upon the alleged bases:

> 6. That the mother has not had any contact with the child since December of 1975. That the mother has without cause, failed to establish or maintain concern or responsibility as to the child's welfare.
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> 7. That the mother has willfully left the child in foster care for more than two consecutive years without either showing that substantial progress has been made in correcting the conditions which led to the removal of the child, or without showing positive response to the diligent efforts of the Department of Social Services to strengthen her relationship to the child or to make and follow through with constructive planning for the future of the child. (J.A. 3)

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[34]N.C. Gen. Stat. §7A-289.32(1) was repealed on May 29, 1979.

N.C. Gen. Stat. § 7A-289.32(1) requires that a parent's faliure to establish or maintain concern or responsibility for her child's welfare be "without cause"; and N.C. Gen. Stat. §7A-289.32(3) requires that the parent has "willfully" left the child in foster care for more than two years. These statutes have been strictly construed by North Carolina appellate courts to protect the fundamental rights of parents to the care and custody of their children.[35] Therefore, a defense, apparent on the face of the pleadings, is that during the majority of the two years in issue (April of 1976 through April of 1978) petitioner was in prison and, as a result, did not "willfully" or "without cause" leave her son in foster care or fail to establish or maintain concern for his welfare.

It would also appear that the petition in this case was brought under statutory subsections which were never intended to apply to petitioner's situation. Numerous potential defenses to the petition existed, but were never developed at the hearing because petitioner was unrepresented by counsel. For example, N.C. Gen. Stat. § 7A-289.32 requires the social services department to make "diligent efforts" to reunite the family; but this provision would appear inapplicable to a mother serving an extended prison sentence. Moreover, in view of the

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[35] In *In the Matter of Dinsmore*, 36 N.C. App. 720, 245 S.E.2d 386 (1978), the court held that evidence of non-support of a child as a result of a parent's alcoholism is insufficient to warrant a finding of *willfull* [emphasis added] failure to support or abandonment. In *Matter of Godwin*, 31 N.C. App. 137, 228 S.E.2d 521 (1976), the court held that the refusal of a father to submit to counselling in order to determine his suitability as a parent did not constitute "serious neglect" within the meaning of the termination statute. *See also, Forsyth County Department of Social Services v. Roberts*, 22 N.C. App. 658, 207 S.E.2d 368 (1974).

uncontroverted testimony by petitioner's social worker that she had visited petitioner only once in prison, during either December of 1977 or January of 1978,[36] considerable doubt existed as to whether the "diligent efforts" requirement imposed by N.C. Gen. Stat. § 7A-289.32(3) was satisfied.[37]

A crucial, undeveloped issue at the hearing was whether petitioner had "willfully" left her son in foster care for two years without making "constructive" plans for his future [N.C. Gen Stat. § 7A-289.32(3)]. The social worker testified that, at their meeting in prison, petitioner had asked her to place her child with her mother (RT 15); and it was petitioner's consistent position at the hearing that her child should be placed with the grandmother, with whom her four other children were already residing. (RT 40) Although the social worker testified that Lucille Lassiter, the child's grandmother, had told her that caring for William would be more than she could handle (RT 14), this was flatly denied by the grandmother who testified that she was ready, willing, and

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[36] RT 10, 15. References denoted "RT" are to the certified transcript of the hearing conducted August 31, 1978. A copy of this certified transcript has been lodged by petitioner with the Clerk of this Court.

[37] A recent survey of foster care in North Carolina supports the conclusion that such "diligent" efforts are rarely made.

> Because of excessively high caseloads, administrative duties, and paperwork, foster care social workers are able to spend only an average of 48 minutes a month on direct, in person work with each foster child . . . Once the state has removed the child from his home, it has little contact with the natural parents and [the state] provides few services to help stabilize and reunite the family. . . . Governor's Advocacy Report, *supra*.

able to take care of William.[38] Certainly, on its face, arranging for a child to be cared for by his grandmother would appear to be a "constructive plan" for the child's future sufficient to defeat a petition under that part of N.C. Gen. Stat. § 7A-289.32(3).

In *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494 (1977), the Court recalled:

> Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition. Id. at 504.

In his concurring opinion in *Moore, supra*, Justice Brennan recognized the profound, cultural importance of extended family ties to black families, such as the Lassiters. *Id.* at 509-10. No reason appears in the trial record why William could not have been placed with his grandmother until such time as his mother was discharged from prison or he attained adulthood.[39] The drastic step

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[38] ". . . I definitely told her [the social worker] that I could take this child because I have four and I said now, the girl wants me to have the child and I would like for all of them to be together because she is – I got four children, she is the only one that have children and that's personally my family and it's all the family we have and I said I want all her children." (RT 52)

[39] Petitioner is eligible for parole after she serves one fifth of the maximum penalty prescribed by law, which in this case would be eight years, less credit for time served. N.C. Gen. Stat. § 15A-1355 (b)(c). The hearing transcript does not reveal whether the court was cognizant of this fact.

of terminating parental rights was taken by the court even though placement with the extended family was the most feasible plan. It would have kept the parent-child relationship intact; it would have permitted the extended family to meet the family crisis; it would have preserved the child's relationship with his siblings; and it would have conserved fiscal resources which should only be expended when the extended family cannot suitably handle the situation.

N.C. Gen. Stat. §7A-289.31 requires that even if a statutory basis for termination exists, the petition must be dismissed if the best interests of the child would be furthered by such action. Although findings and conclusions are required under North Carolina law [N.C. Gen. Stat. §§ 7A-289.30 (e); 7A-289.31], the court order in this case conspicuously omits any finding or conclusion as to why the "best interests" of the minor would not have been served by dismissing the petition and placing the child with the grandmother. (J.A. 5-8) This failure to consider such a placement seems particularly unwarranted considering the historical significance of the extended family within the Afro-American culture. Indeed, as indicated by a recent study,

> At a time when kinship bonds among whites are weakening, the extended family is still one of the most viable institutions for the survival and advancement of black people today. And, one of the key functions performed by the black extended family is the informal adoption or foster care of children by grandparents, aunts, and uncles and other kin . . . Historically, blacks have had to develop their own informal networks for adoption and foster care. While two-thirds of white children born out-of-wedlock are given away for formal adoption, 90

> percent of the black children born out-of-wedlock each year are retained by the extended family and only one-tenth are placed with formal adoption agencies. Hill, *Informal Adoption Among Black Families*, iv (1977).

If counsel had been appointed to represent petitioner, it is reasonable to expect that this important issue would have been clearly presented to the court as a discrete legal issue requiring appropriate findings and conclusions. With the issue properly in focus, the record would – at the very least – not be in its present state of confusion as to why the most drastic available alternative was preferred to maintaining the extended family.[40]

Many of the potential difficulties encountered by unrepresented parents in termination proceedings, and described in Point III, B, *supra*, are illustrated by what

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[40] Appointment of counsel is also essential in order to safeguard the parent's right to appeal. Pursuant to N.C. Gen. Stat. § 7A-289.34 (Cum. Supp. 1979) any party has the right to appeal an adverse ruling in a termination case; however, a party wishing to appeal must give notice of appeal within ten days after the hearing. *Id.* This requirement is jurisdictional and, if not met, will result in the dismissal of an appeal. *See*, N.C. Gen Stat. §1-279 (Cum. Supp. 1979); *O'Neill v. Southern National Bank*, 40 N.C. App. 227, 252 S.E.2d 231 (1979). Without provision of counsel, most parents will fail to understand the importance of an appeal and, doubtless, will fail to give timely notice of their intention to pursue an appeal.

In the case at bench, although not required to do so by statute, the trial court did advise petitioner of her right to appeal, and the possible availability of counsel on appeal from the North Central Legal Assistance Program. (RT 62) The late advice is anomalous in view of the court's patent failure to inform petitioner, prior to trial, of any legal assistance programs where she might have sought representation by counsel.

occurred in the case at bench. Much of the evidence against petitioner was hearsay based upon social welfare records, but these records were never authenticated or qualified as business records exceptions to the hearsay rule. (RT 10-13) The hearing was never bifurcated, resulting in an impermissible combining of the court's adjudicative and dispositional functions. Petitioner was clearly unable to conduct a meaningful cross-examination of the social worker, the only witness who testified against her.[41] Since petitioner was unrepresented by counsel, most of her testimony was delivered in response

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[41] In fact, the trial transcript demonstrates that Ms. Lassiter did not understand the function of cross-examination or the difference between testifying herself and examining a witness. For example,

"The Court: All right. Do you want to ask her any questions?

Ms. Lassiter: About what? About what she –

The Court: About this child.

Ms. Lassiter: Oh, yes.

The Court: All right. Go ahead.

[Ms. Lassiter]: The only thing I know is that when you say –

The Court: I don't want you to testify.

Ms. Lassiter: Okay.

The Court: I want to know whether you want to cross-examine her or ask any questions . . . . .

Ms. Lassiter: Yes, I want to. Well, you know, the only thing I know about is my part that I know about it. I know –

The Court: I am not talking about what you know. I want to know if you want to ask her any questions or not

Ms. Lassiter: About that?"

(RT 19).

to questions from the court. (RT 25-36) The court questioned Ms. Lassiter and her mother as though they were adverse witnesses (RT 23-36, 43-52) and on several occasions displayed impatience or incredulity at their answers.[42]

In *In re Murchinson*, 349 U.S. 133 (1955), the Court stated what has become a fundamental tenet of due process: a fair trial requires not only an absence of actual bias but – of equal importance – the appearance of fairness. Because petitioner in the present case was unrepresented by counsel, the court found it necessary to conduct much of the examination of her and her mother. This intertwining of adversarial and judicial functions vitiated the court's ability to serve as an impartial arbiter, and has been condemned by other courts as inconsistent with fundamental fairness. *Ruiz v. Delgado*, 359 F.2d 718 (1st Cir. 1966); *Lois R. v. Superior Court*, 19 Cal. App.3d 895, 97 Cal.Rptr. 158 (1971). The court appears to have been frustrated by its inability to elucidate the answers it wanted from petitioner and her mother. Whether this actually compromised the court's ability to function as a neutral, judicial officer is a matter of conjecture, but petitioner should not have been placed in the position where the court's impartiality may have been compromised.

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[42] For example, when the court concluded its examination of petitioner, it turned her over to Mr. Odom, counsel for the department of social services, with the statement: "All right, Mr. Odom, see what you can do." (RT 36) When Lucille Lassiter stated that she would raise her right hand to God and swear that she had never told a social worker that her daughter had left her children in a cold house with no heat, the court interjected: "I wish you wouldn't talk like that it scares me to be in the same room with you." (RT 55)

Finally, it must be recognized that without representation by counsel, petitioner lost her right to present testimony on direct examinations. Both petitioner and her mother were subjected to two cross-examinations – one conducted by counsel for the social services department and one by the court. As previously discussed, numerous defenses available to petitioner was unaware of their existence. Finally, since petitioner was totally unskilled at cross-examination, various factual disputes went unresolved. (RT 18, 22-3, 35) In short, the trial testimony in the case at bench vividly attests to the insuperable difficulties confronted by an unrepresented parent in a termination proceeding – difficulties which render the promise of due process to be illusory.

IV.

NEITHER EXPENSE NOR ADMINISTRATIVE INCONVENIENCE CAN JUSTIFY DENIAL OF COURT-APPOINTED COUNSEL FOR INDIGENT PARENTS IN TERMINATION CASES.

A. This Court Has Never Recognized Expense or Adminstrative Inconvenience as a Reason to Deny Counsel to an Indigent Litigant.

The final factors which this Court has scrutinized in determining the scope of due process protections are "the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976). However, this Court has never denied an indigent person representation by counsel because of costs or administrative inconvenience. *See, e.g., Bounds v. Smith*, 430 U.S. 817 (1977); *Ross v. Moffitt*, 417 U.S. 600 (1974); *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Douglas v. California*, 372

U.S. 353 (1963); *Gideon v. Wainwright*, 372 U.S. 335 (1963). As the Court stated in *Bounds v. Smith, supra*, in holding that inmates preparing legal papers must be provided with either adequate law libraries or assistance from persons trained in the law, ". . . the cost of protecting a constitutional right cannot justify its total denial." *Id.* at 825.

The premise underlying the above-cited cases is that provision of counsel is of such fundamental importance to a litigant whose liberty is in jeopardy that expense or administrative inconvenience must be considered of *de minimis* significance in evaluating the applicability of constitutional safeguards. In fact, the expense argument was specifically rejected by this Court in *Baldwin v. New York*, 399 U.S. 66, 73-74 (1970), where this Court stated that neither fiscal nor adminstrative burdens could justify denial of jury trials in criminal cases where the potential maximum sentence was less than six months. Clearly, jury trials in such cases are less fundamental to our constitutional system than the right to counsel in a proceeding where a parent can be permanently deprived of custody of her children. *Compare In re Gault*, 387 U.S. 1 (1967), and *Stanley v. Illinois*, 405 U.S. 645 (1972), *with McKeiver v. Pennsylvania*, 504 U.S. 528 (1971). This is the conclusion reached by several lower courts which have held that neither expense nor inconvenience can justify denial of the right to court-appointed counsel. *Sweeten v. Sneddon*, 324 F.Supp. 1094, 1105 (D. Utah 1971); *Bramlett v. Peterson*, 307 F.Supp. 1311, 1316-17 (M.D. Fla. 1969); *Phillips v. Cole*, 298 F. Supp. 1049, 1053 (N.D. Miss. 1968).

B. The Cost and Administrative Inconvenience of Providing Counsel for Indigent Parents in Termination Cases Would Not Be Great.

Even under the assumption, which this Court has consistently rejected, that costs and administrative inconvenience are relevant factors in determining the applicability of fundamental constitutional rights, there is little reason to believe that the burdens imposed by requiring appointment of counsel would be great. Annexed to this brief as Appendix B is a chart which demonstrates that the right to counsel is already guaranteed for indigent parents in termination proceedings in at least thirty-four states and the District of Columbia.[43] All of the most heavily populated states, which presumably have the greatest number of termination hearings, already guarantee the parent's right to counsel; and it is entirely possible that in those states where the right to counsel is not explicitly guaranteed, counsel is appointed in some or all cases in the exercise of the courts' discretion.

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[43]Two other states, Oregon and Tennessee, may also guarantee the right to counsel, although the situation in those jurisdictions is not entirely clear. *State v. Jamison*, 444 P.2d 15 (Ore. Sup. Ct 1968), contains *dicta* which suggests that the court was finding that the right to counsel was based upon the Constitution as well as Oregon statutes. *Id.* at 17. Although Oregon Stat. § 419.498 does not presently guarantee the right to counsel for parents, this may be because the right to counsel has already been found by the Oregon Supreme Court to emanate from a constitutional source.

Smith v. Edminston, 431 F. Supp. 941 (W.D. Tenn. 1977), holds that parents in dependency and neglect cases possess a constitutional right to representation by counsel. The decision in *Smith* would seem to extend to termination cases, although there is no Tennessee case directly on point.

There do not appear to be any national statistics concerning the annual number of termination proceedings, although there is agreement that the number of termination cases constitutes a small fraction of the total number of abuse, neglect, or dependency proceedings.[44] Review of the county social services records in five counties in North Carolina revealed that in two of the counties termination had been successfully sought in only two cases during a two-year period. [45] In the five county field audit, termination of parental rights was infrequently mentioned in the records, and, "[w]here it had been mentioned, it had not yet happened . . . ."[46] A study of several states by the Children's Defense Fund also indicates that the total number of termination proceedings is not great.[47] The cost of furnishing counsel in the relatively few states where it is not already provided would, therefore, be minimal, particularly in comparison to the cost of furnishing counsel in the hundreds of thousands of criminal cases where this Court has held that the right to counsel is constitutionally guaranteed. *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Gideon v. Wainwright*, 372 U.S. 335 (1963).

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[44] "While there is some evidence of increased terminations, such laws still are applied in a very small percentage of the cases where children are in state care." Wald, *supra*, 28 Stan. L. Rev. 623, 636 (1976).

[45] Governor's Advocacy Report, *supra*. at 62.

[46] *Id.* at 63.;

[47] It is reported that in 1975 there were 121 terminations of parental rights in Arizona, 67 in South Carolina, and 844 in California. However, the California figures include only those children for whom parental rights were teminated and adoptive placements were made. Children's Defense Fund, *Children Without Homes: An Examination of Public Responsibility to Children in Out-of-Home Care*, Appendix 0 at 256 (1975).

In *Argersinger, supra,* this Court held that an accused in a criminal case may not be denied the assistance of counsel when the defendant suffers deprivation of liberty, no matter how brief. To guarantee counsel to an accused who may be incarcerated for one day, while denying counsel on the basis of cost to a parent who may lose her children forever, would foster the most irrational and indefensible of inequities.

Finally, the administrative burden which would be imposed in those fourteen to sixteen jurisdictions which do not already provide counsel for indigent parents in termination cases as a matter of right would be slight. These states already provide counsel for children in delinquency proceedings. [*In re Gault,* 387 U.S. 1 (1967)] ; and may provide counsel for children or parents in neglect, abuse, or dependency proceedings.[48] The

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[48] North Carolina law, for example, provides:

"In any proceeding in which delinquency is alleged, the judge shall appoint counsel unless counsel is retained for the juvenile." N.C. Gen. Stat. § 7A-584.

"When in a petition a juvenile is alleged to be abused or neglected, the judge shall appoint a *guardian ad litem* to represent the juvenile." N.C. Gen. Stat. § 7A-586.

"In cases where the juvenile petition alleges that a juvenile is abused, neglected or dependent, the parent has the right to appointed counsel in cases of indigency unless the parent waives the right." N.C. Gen. Stat. § 7A-587.

It is, indeed, ironic that the North Carolina legislature has seen fit to guarantee the right of indigent parents to appointed counsel in abuse, neglect, or dependency proceedings, where the deprivation of parental rights is temporary, but not in termination cases which result in the permanent and total destruction of the parent-child relationship.

[footnote continued]

administrative mechanism for appointment of counsel – whether it be through a public defender system or a panel comprised of private attorneys – will already be functional; and it will be relatively simple to expand the administrative system to include a relatively small number of termination cases.

C. A Decision by this Court Holding that Indigent Parents are Constitutionally Entitled to Appointed Counsel in Termination Cases Does Not Require Provision of Counsel Generally in Civil Cases.

A decision by this Court that indigent parents in termination of parental rights cases are constitutionally entitled to representation by counsel does not mean that attorneys must be furnished to indigent litigants generally in civil proceedings. In civil litigation between private parties, such as divorce cases involving child custody disputes,[49] the government is not a party and does not initiate the proceeding. Hence, there is no institutional inequality of resources and skills between the parties which typifies a proceeding to terminate parental rights. *See, In re Ella B., supra;* Note: *Child Neglect: Due Process for the Parent,* 70 Colum L. Rev. 465, 477 (1970).

For a listing of those jurisdictions which guarantee a right to counsel for indigent parents in abuse, neglect, or dependency cases see Katz, Howe, and McGrath, *Child Neglect Laws in America,* 9 Fam. L. Q. 1, 59 and Table VI at 31-33 (1975).

[49]Such civil litigation between private parties would include step-parent adoptions where one biological parent is seeking to contest an adoption by a step-parent which is being supported by the other biological parent. *See, In the Matter of the Petition of J.O.L.,* 409 A.2d 1073 (D.C. Ct. of App. 1979), *cert. granted,* 49 U.S.L.W. 3207 (10/7/80).

Unlike child custody disputes, termination of parental rights cases are government initiated proceedings in which the parent is charged with wrongdoing, and in which the considerable resources of the state are amassed against the private litigant. *Danforth v. State Dept. of Health and Welfare,* 303 A.2d 794, 799 (Me. Sup. Ct. 1973). In addition, parties who are litigants in civil disputes do not usually face criminal charges based upon the conduct which is the subject of the civil proceeding, an omnipresent possibility in any termination case based upon allegations of abuse or neglect. *See, e.g., State ex rel. Lemaster v. Oakley,* 203 S.E.2d 140, 144 (W. Va. Sup. Ct. of App. 1974).[50] Finally, termination proceedings directly implicate the fundamental, constitutionally protected right to family integrity, a right which this Court has consistently found to be a cornerstone of our societal values and traditions. *See, Moore v. City of East Cleveland, Ohio,* 431 U.S. 494, 503-504 (1977). Most civil cases do not impinge upon such fundamental rights; even child custody disputes, which do implicate fundamental parental rights, do not result in the total destruction of the nuclear or extended family inasmuch as custody is usually awarded to one of the parents.

Termination proceedings are perhaps unparalleled in our judicial system. They directly implicate constitutionally protected interests of the highest magnitude. They involve drastic governmental intrusion into the fundamental realm of family privacy. They contain allegations of parental misconduct, generally considered reprehensible by most of our society, and frequently involve the threat of criminal prosectuion. For these reasons, the

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[50] *See,* cases cited in Point II B, *supra.*

constitutionally protected right of indigent parents in termination proceedings to representation by counsel does not require extension of the right to counsel to more traditional forms of civil litigation between private parties.

CONCLUSION

For the above-stated reasons petitioner urges that the judgment and order of the North Carolina Court of Appeals be reversed and the case be remanded with directions to accord petitioner a new hearing at which she shall be provided court-appointed counsel.

Respectfully submitted,

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APPENDIX A

North Carolina Statutes In Effect As of August 31, 1978, the Date of the Termination of Parental Rights Proceeding In This Case:

ARTICLE 24B

§7A-289.22. Legislative intent; construction of Article. – The General Assembly hereby declares as a matter of legislative policy with respect to termination of parental rights:

(1) The general purpose of this Article is to provide judicial procedures for terminating the legal relationship between a child and his or her biological or legal parents when such parents have demonstrated that they will not provide the degree of care which promotes the healthy and orderly physical and emotional well-being of the child.

(2) It is the further purpose of this Article to recognize the necessity for any child to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all children from the unnecessary severance of a relationship with biological or legal parents.

(3) Action which is in the best interests of the child should be taken in all cases where the interests of the child and those of his or her parents or other persons are in conflict; and to that end this Article should be liberally construed. (1977, c. 879, s. 8.)

§7A-289.23. Jurisdiction. – The district court shall have exclusive original jurisdiction to hear and determine any petition relating to termination of parental

rights to any child who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing the petition. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. A guardian ad litem shall be appointed to represent such minor parent, under the age of 14 years. (1977, c. 879, s. 8.)

§7A-289.24. **Who may petition.** – A petition to terminate the parental rights of either or both parents to his, her, or their minor child may only be filed by:

(1) Either parent seeking termination of the right of the other parent; or

(2) Any person who has been judicially appointed as the guardian of the person of the child; or

(3) Any county department of social services or licensed child-placing agency to whom custody of the child has been given by a court of competent jurisdiction; or

(4) Any county department of social services or licensed child-placing agency to which the child has been surrendered for adoption by one of the parents or by the guardian of the person of such child, pursuant to G.S. 48-9(a)(1); or

(5) Any person with whom the child has resided for a continuous period of two years or more next preceding the filing of the petition. (1977, c. 879, s. 8.)

§7A-289.25. **Petition.** – The petition shall be verified by the petitioner and shall be entitled "In re (*last name of child*) a minor child"; and shall set forth such of the

following facts as are known; and with respect to the facts which are unknown the petitioner shall so state:

(1) The name of the child as it appears on the child's birth certificate, the date and place of birth, and the county where the child is presently residing.

(2) The name and address of the petitioner and facts sufficient to identify the petitioner as one entitled to petition under G.S. 7A-289.24.

(3) The name and address of the parents of the child. If the name or address of one or both parents is unknown to the petitioner, the petitioner shall set forth with particularity the petitioner's efforts to ascertain the identity or whereabouts of the parent or parents. Such information may be contained in an affidavit attached to the petition and incorporated therein by reference.

(4) The name and address of any person appointed as guardian of the person of the child pursuant to the provisions of Article 1 of Chapter 33 of the General Statutes, or of G.S. 7A-286(7).

(5) The name and address of any person or agency to whom custody of the child has been given by a court of this or any other state; and a copy of such custody order shall be attached to the petition.

(6) Facts which are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist. (1977, c. 879, s. 8.)

§7A-289.26. Preliminary hearing; unknown parent. – (a) If either the name or identity of any parent whose parental rights the petitioner seeks to terminate is not

known to the petitioner, the court shall within 10 days from the date of filing of the petition, or during the next term of court in the county where the petition is filed if there is no court in said county in that 10-day period, conduct a preliminary hearing to ascertain the name or identity of such parent.

(b) The court may, in its discretion, inquire of any known parent of the child concerning the identity of the unknown parent and may appoint a guardian ad litem for the unknown parent to conduct a diligent search for the parent. Should the court ascertain the name or identity of the parent, it shall enter a finding to that effect; and such parent shall be summoned to appear in accordance with G.S. 7A-289.27.

(c) Notice of the preliminary hearing need be given only to the petitioner who shall appear at the hearing; but the court may cause summons to be issued to any person directing him to appear and testify.

(d) If the court is unable to ascertain the name or identity of the unknown parent, the court shall order publication of notice of the termination proceeding and shall specifically order the place or places of publication and the contents of the notice which the court concludes is most likely to identify the child to such unknown parent. The notice shall be published in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and 1-598 and published in the counties directed by the court, once a week for three successive weeks. Provided, further, the notice shall:

(1) Designate the court in which the petition is pending;

(2) Be directed to "the father (mother)(father and mother) of a male(female) child born on or about _____ in _____
(date)
County, _____
(City) (State)
respondent";

(3) Designate the docket number and title of the case (the court may direct the actual name of the title be eliminated and the words "In Re Doe" substituted therefor);

(4) State that a petition seeking to terminate the parental rights of the respondent has been filed;

(5) Direct the respondent to answer the petition within 30 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of first publication of notice, and be substantially in the form as set forth in G.S. 1A-1, Rule 4(j)(9)(c); and

(6) State that the respondent's parental rights to the child will be terminated upon failure to answer the petition within the time prescribed.

Upon completion of the service, an affidavit of the publisher shall be filed with the court.

(e) The court shall issue the order required by G.S. 7A-289.26(b) and (d) within 30 days from the date of the preliminary hearing unless the court shall determine that additional time for investigation is required.

(f) Upon the failure of the parent served by publication pursuant to G.S. 7A-289.26(d) to answer the petition within the time prescribed, the court shall issue an order terminating all parental rights of the unknown parent. (1977, c. 879, s. 8.)

§7A-289.27. **Issuance of summons.** – Except as provided in G.S. 7A-289.26, upon the filing of the petition, the court shall cause a summons to be issued, directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(1) The parents of the child;

(2) Any person who has been judicially appointed as guardian of the person of the child;

(3) The custodian of the child appointed by a court of competent jurisdiction;

(4) Any county department of social services or licensed child-placing agency to whom a child has been released by one parent pursuant to G.S. 48-9(a)(1); and

(5) The child, if he or she is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the child to a county department of social services or licensed child-placing agency, nor to any parent who has consented to the adoption of the child by the petitioner. The summons shall notify the respondents to file written answer within 30 days after service of the summons and petition and that if the respondents fail to answer, the petitioner will apply to the court for the relief prayed for in the petition. Service of the summons shall be completed as provided under the procedures established by

G.S. 1A-1, Rule 4(j); but the parent of the child shall not be deemed to be under disability even though such parent is a minor. (1977, c. 879, s. 8.)

§7A-289.28. Failure of respondents to answer. – Upon the failure of the respondents to file written answer to the petition with the court within 30 days after service of the summons and petition, or within 30 days from the date of first publication if service is by publication, the court shall issue an order terminating all parental and custodial rights of the respondent or respondents with respect to the child; provided the court shall order a hearing on the petition and may examine the petitioner or others on the facts alleged in the petition. (1977, c. 879, s. 8)

§7A-289.29. Answer of respondents. – (a) Any respondent may file a written answer to the petition. The answer shall admit or deny the allegations of the petition and shall set forth the name and address of the answering respondent or his or her attorney.

(b) If an answer denies any material allegation of the petition, the court shall appoint a licensed attorney as guardian ad litem for the child to represent the best interests of the child. The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days to the petitioner, the answering respondent(s), and the guardian ad litem for the child, to determine the issues raised by the petition and answer(s). Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first-class postage prepaid, and addressed to the petitioner, respondent, and guardian ad litem or their counsel of record, at

the addresses appearing in the petition and responsive pleading. (1977, c. 879, s. 8.)

§7A-289.30. Adjudicatory hearing on termination. – (a) The hearing on the termination of parental rights shall be conducted by the district court sitting without a jury. Reporting of the hearing shall be as provided by G.S. 7A-198 for reporting civil trials.

(b) The court may, upon finding that reasonable cause exists, order the child to be examined by a psychiatrist, a licensed clinical psychologist, a physician, a public or private agency, or any other expert in order that the child's psychological or physical condition or needs may be ascertained or, in the case of a parent whose ability to care for the child is at issue, the cout may order a similar examination of any parent of the child.

(c) The court may for good cause shown continue the hearing for such time as is required for receiving additional evidence, any reports or assessments which the court has requested, or any other information needed in the best interest of the child.

(d) The court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7A-289.32 which authorize the termination of parental rights of the respondent.

(e) All findings of fact shall be based upon a preponderance of the evidence. No husband-wife or physician-patient privilege shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental rights. (1977, c. 879, s. 8.)

§7A-289.31. Disposition. – (a) Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the child unless the court shall further determine that the best interests of the child require that the parental rights of such parent not be terminated.

(b) Should the court conclude that irrespective of the existence of one or more circumstances authorizing termination of parental rights, the best interests of the child require that such rights should not be terminated, the court shall dismiss the petition, but only after setting forth the facts and conclusions upon which such dismissal is based.

(c) Should the court determine that circumstances authorizing termination of parental rights do not exist, the court shall dismiss the petition, making appropriate findings of fact and conclusions.

(d) The court may tax the cost of the proceeding to any party. (1977, c. 879, s. 8.)

§7A-289.32. Grounds for terminating parental rights. – The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has without cause failed to establish or maintain concern or responsibility as to the child's welfare.

(2) The parent has physically abused or neglected the child. The child shall be deemed to be physically abused or neglected if the court finds the child to be an abused child within the meaning of G.S. 110-117(1)(a), (b), or (c), or a neglected child within the meaning of G.S. 7A-278(4).

(3) The parent has willfully left the child in foster care for more than two consecutive years without showing to the satisfaction of the court that substantial progress has been made within two years in correcting those conditions which led to the removal of the child for neglect, or without showing positive response within two years to the diligent efforts of a county department of social services, a child-caring institution or licensed child-placing agency to encourage the parent to strengthen the parental relationship to the child or to make and follow through with constructive planning for the future of the child.

(4) The child has been placed in the custody of a county department of social services, a licensed child-placing agency, or a child-caring institution, and the parent, for a continuous period of six months next preceding the filing of the petition, has failed to pay a reasonable portion of the cost of care for the child.

(5) One parent has been awarded custody of the child by judicial decree, or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the child, as required by said decree or custody agreement.

(6) The father of a child born out of wedlock has not prior to the filing of a petition to terminate his parental rights;

a. Established paternity judicially or by affidavit; or

b. Legitimated the child pursuant to provisions of G.S. 49-10, or filed a petition for this specific purpose; or

c. Legitimated the child by marriage to the mother of the child; or

d. Provided substantial financial support or consistent care with respect to the child and mother. (1977, c. 879, s. 8.)

§7A-289.33. Effects of termination order. – An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the child and of the child to the parent, arising from the parental relationship, except that the child's right of inheritance from his or her parent shall not terminate until such time as a final order of adoption is issued. Such parent is not thereafter entitled to notice of proceedings to adopt the child and may not object thereto or otherwise participate therein.

(1) If the child had been placed in the custody of or released for adoption by one parent to, a county department of social services or licensed child-placing agency and is in the custody of such agency at the time of such filing of the petition, that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of said child as such agency would have acquired had the parent whose rights are terminated released the child to that agency pursuant to the provisions of G.S. 48-9(a)(1), including the right to consent to the adoption of such child.

(2) Except as provided in subdivision (1) above, upon entering an order terminating the parental rights of one or both parents, the court may place the

child in the custody of the petitioner, or some other suitable person, or in the custody of the Department of Social Services or licensed child-placing agency, as may appear to be in the best interest of the child. (1977, c, 879, s. 8.)

§7A-289.34. Appeals; modification of order after affirmation. – Any child, parent, guardian, custodian or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after the hearing. Pending disposition of an appeal, the court may enter such temporary order affecting the custody or placement of the child as the court finds to be in the best interest of the child or the best interest of the State. Upon the affirmation of the order of adjudication or disposition of the district court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of such an appeal, the district court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interest of the child to reflect any adjustment made by the child or change to reflect any adjustment made by the child or change in circumstances during the period of time the case on appeal was pending, provided that if such modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why said modifying order should be vacated or altered. (1977, c. 879, s. 8.)

§7A-300. Expenses paid from State funds. – (a) The operating expenses of the Judicial Department shall be paid from State funds, out of appropriations for this purpose made by the General Assembly. The Administrative

Office of the Courts shall prepare budget estimates to cover these expenses, including therein the following items and such other items as are deemed necessary for the proper functioning of the Judicial Department:

(1) Salaries, departmental expense, printing and other costs of the appellate division;

(2) Salaries and expenses of superior court judges, solicitors, assistant solicitors, public defenders, and assistant public defenders, and fees and expenses of counsel assigned to represent indigents under the provisions of Subchapter IX of this Chapter.

(3) Salaries, travel expenses, departmental expense, printing and other costs of the Administrative Office of the Courts;

(4) Salaries and travel expenses of district judges, magistrates, and family court counselors;

(5) Salaries and travel expenses of clerks of superior court, their assistants, deputies, and other employees, and the expenses of their offices, including supplies and materials, postage, telephone and telegraph, bonds and insurance, equipment, and other necessary items;

(6) Fees and travel expenses of jurors, and of witnesses required to be paid by the State;

(7) Compensation and allowances of court reporters;

(8) Briefs for counsel and transcripts and other records for adequate appellate review when an appeal is taken by an indigent person;

(9) Transcripts of preliminary hearings in indigency cases and, in cases in which the defendant pays for a transcript of the preliminary hearing, a copy for the solicitor.

(10) Transcript of the evidence and trial court charge furnished the solicitor when a criminal action is appealed to the appellate division;

(11) All other expenses arising out of the operations of the Judicial Department which by law are made the responsibility of the State; and

(12) Operating expenses of the Judicial Council and the Judicial Standards Commission.

§7A-450. Indigency; definition; entitlement; determination. – (a) An indigent person is a person who is financially unable to secure legal representation and to provide all other necessary expenses of representation in an action or proceeding enumerated in this subchapter.

(b) Whenever a person, under the standards and procedures set out in this subchapter, is determined to be an indigent person entitled to counsel, it is the responsibility of the State to provide him with counsel and the other necessary expenses of representation. The professional relationship of counsel so provided to the indigent person he represents is the same as if counsel had been privately retained by the indigent person.

(c) The question of indigency may be determined or redetermined by the court at any stage of the action or proceeding at which an indigent is entitled to representation. (1969, c. 1013, s. 1.)

§7A-451. Scope of entitlement. – (a) An indigent person is entitled to services of counsel in the following actions and proceedings:

(1) Any felony case, and any misdemeanor case for which the authorized punishment exceeds six months imprisonment or a five hundred dollars ($500.00) fine;

(2) A hearing on a petition for a writ of habeas corpus under chapter 17 of the General Statutes;

(3) A post-conviction proceeding under chapter 15 of the General Statutes;

(4) A hearing for revocation of probation, if counsel was provided at trial or if confinement of more than six months is possible as a result of the hearing;

(5) A hearing in which extradition to another state is sought;

(6) A proceeding for judicial hospitalization under chapter 122, article 11 (Mentally Ill Criminals), of the General Statutes;

(7) A civil arrest and bail proceeding under chapter 1, article 34, of the General Statutes; and

(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible.

(b) In each of the actions and proceedings enumerated in subsection (1) of this section, entitlement to the services of counsel begins as soon as feasible after the indigent is taken into custody or service is made upon him of the charge, petition, notice or other initiating process. Entitlement continues through any critical stage of the action or proceeding, including, if applicable:

(1) An in-custody interrogation;

(2) A pretrial identification procedure at which the presence of the indigent is required;

(3) A hearing for the reduction of bail, or to fix bail if bail has been earlier denied;

(4) A preliminary hearing;

(5) Trial and sentencing; and

(6) Review of any judgment or decree pursuant to G.S. 7A-27, G.S. 7A-30(1), G.S. 7A-30(2), and G.S. 15-222. (1969, c. 1013, s. 1; 1973, c. 151, ss. 1, 2; c. 616; c. 726, s. 4; c. 1116, s. 1; c. 1125; c. 1320; c. 1378, s. 2; 1977, c. 649, s. 4; c. 766, s. 2.)

APPENDIX B

CHART DEMONSTRATING WHICH STATES PROVIDE RIGHT TO COUNSEL FOR INDIGENT PARENTS IN TERMINATION OF PARENTAL RIGHTS PROCEEDINGS

STATE	RIGHT TO COUNSEL PROVIDED BY STATUTE	RIGHT TO COUNSEL PROVIDED BY COURT DECISION	RIGHT TO COUNSEL NOT GUARANTEED	UNCLEAR
ALABAMA	X			
ALASKA	X			
ARIZONA	X			
ARKANSAS			X	
CALIFORNIA	X			
COLORADO	X			
CONNECTICUT	X			
DELAWARE			X	
D.C.	X			
FLORIDA			X	

STATE	RIGHT TO COUNSEL PROVIDED BY STATUTE	RIGHT TO COUNSEL PROVIDED BY COURT DECISION	RIGHT TO COUNSEL NOT GUARANTEED	UNCLEAR
GEORGIA			X	
HAWAII			X	
IDAHO	X			
ILLINOIS	X			
INDIANA	X			
IOWA	X			
KANSAS	X			
KENTUCKY	X			
LOUISIANA	X			
MAINE	X	X		

STATE	RIGHT TO COUNSEL PROVIDED BY STATUTE	RIGHT TO COUNSEL PROVIDED BY COURT DECISION	RIGHT TO COUNSEL NOT GUARANTEED	UNCLEAR
MARYLAND	X			
MASSACHUSETTS	X			
MICHIGAN	X			
MINNESOTA	X			
MISSISSIPPI	X			
MISSOURI	X			
MONTANA	X			
NEBRASKA	X	X		
NEVADA	X			
NEW HAMPSHIRE	X			

STATE	RIGHT TO COUNSEL PROVIDED BY STATUTE	RIGHT TO COUNSEL PROVIDED BY COURT DECISION	RIGHT TO COUNSEL NOT GUARANTEED	UNCLEAR
NEW JERSEY	X	X		
NEW MEXICO			X	
NEW YORK	X			
NORTH CAROLINA			X	
NORTH DAKOTA	X			
OHIO	X			
OKLAHOMA	X	X		
OREGON				X
PENNSYLVANIA		X		
RHODE ISLAND	X			

STATE	RIGHT TO COUNSEL PROVIDED BY STATUTE	RIGHT TO COUNSEL PROVIDED BY COURT DECISION	RIGHT TO COUNSEL NOT GUARANTEED	UNCLEAR
SOUTH CAROLINA			X	
SOUTH DAKOTA			X	
TENNESSEE				X
TEXAS			X	
UTAH	X			
VERMONT			X	
VIRGINIA			X	
WASHINGTON	X			
WEST VIRGINIA		X		
WISCONSIN	X			
WYOMING			X	

STATUTORY AND CASE LAW AUTHORITIES FOR APPENDIX B AND EXPLANATORY NOTES

ALABAMA	Ala. R. Juv. P. 15 §12-15-63 (Supp. 1966)
ALASKA	Alaska Rules of Court Procedure and Administration Children's Rules Rule 15 (1977)
ARIZONA	Ariz. Rev. Stat. Ann. §8-225 (Supp. 1980)
ARKANSAS	Ark. Stat. Ann. §45-413
CALIFORNIA	Cal. Civ. Code Ann. §237.5 (Supp. 1980) (West)
COLORADO	Colo. Rev. Stat. §19-11-103
CONNECTICUT	Conn. Gen. Stat. Ann. Chapter 815-t, §46b-136 (1979) (West)
DELAWARE	Del. Code Ann. tit. 13, §§1101-1112 (Supp. 1978), or Del. Code Ann. tit. 10, §§901 *et seq.*
D.C.	D.C. Code Encycl. §16-2304(b)(1) (Supp. 1978-1979) (West)
FLORIDA	Fla. Stat. Ann. §§39.001 to 39.516 (Supp. 1980) (West)
GEORGIA	GA. Code Ann. §24A-32
HAWAII	Haw. Rev. Stat. §571-62
IDAHO	Idaho Code §16-2009

ILLINOIS	Ill. Rev. Stat. ch. 37, §701-20
INDIANA	Ind. Code Ann. §31-6-7-2(b) (West)
IOWA	Iowa Code Ann. §232.89 (West)
KANSAS	Kan. Stat. Ann. §38.820 (Supp. 1979)
KENTUCKY	Ky. Rev. Stat. §199.600(7)
LOUISIANA	La. Rev. Stat. Ann. §13:1602(c) (Supp. 1974) (West)
MAINE	Me. Rev. Stat. Ann. tit. 22, §4005(2) (Supp. 1979); *Danforth v. State Dept. of Health and Welfare,* 303 A.2d 794 (Me. Sup. Ct. 1973)
MARYLAND	Md. Cts. & Jud. Proc. Code Ann. §3-821
MASSACHUSETTS	Mass. Gen. Laws Ann. ch. 119, §29 (West)
MICHIGAN	Mich. Stat. Ann. JCR §6.1 (Supp. 1980)
MINNESOTA	Minn. Stat. Ann. §260.155 (West)
MISSISSIPPI	Miss. Code Ann. §43-21-17 (1972)
MISSOURI	Mo. Ann. Stat. §211.562 (Supp. 1980) (Vernon)
MONTANA	Mont. Rev. Codes Ann. §61-320 (Supp. 1977)
NEBRASKA	Neb. Rev. Stat. 1943 §43-205.6 (1978); *In re Friesz,* 208 N.W.2d 259 (Neb. Sup. Ct. 1973)
NEVADA	Nev. Rev. Stat. §128.100

NEW HAMPSHIRE	N.H. Rev. Stat. Ann. §170-C:10
NEW JERSEY	N.J. Stat. Ann. §9:6-8.43 (Supp. 1980) (West); *Crist v. Div. of Youth and Family Services,* 320 A.2d 203 (N.J. Super. Ct. 1974)
NEW MEXICO	N.M. Stat. Ann. §§13-14-1 to 13-14-4 (Supp. 1976) and §§13-14A-1 to 13-14A-19 (Supp. 1976) or §22-2-23 (Supp. 1975)
NEW YORK	N.Y. Soc. Serv. Law §384-a (Supp. 1979) (McKinney)
NORTH CAROLINA	N.C. Gen. Stat. §§7A-289.22 to 7A-289.34 (Supp. 1979)
NORTH DAKOTA	N.D. Cent. Code §27-20-26
OHIO	Ohio Rev. Code Ann. §2151.352, Rules of Juvenile Procedure, Rule 4
OKLAHOMA	Okla. Stat. Ann. tit. 10, §1109 (West) *Matter of Chad S.,* 580 P.2d 983 (Okla. Sup. Ct. 1978)
OREGON	Ore. Rev. Stat. §419.498 *State v. Jamison,* 444 P.2d 15 (Ore. Sup. Ct. 1968) (Not clear if *Jamison* provides constitutional or statutory right to counsel. Oregon statute §419.498 does not provide right to counsel for parent)
PENNSYLVANIA	*In re Adoption of R.I.,* 455 Pa. 29, 312 A.2d 601 (1973)

RHODE ISLAND	R.I. Gen. Laws §14-1-31 (1956)
SOUTH CAROLINA	S.C. Code Ann. §§31-60 to 31-65 (Supp. 1975); S.C. Code Ann. §15-1095.14 (Supp. 1975) (provides counsel to indigent parents in delinquent, neglected and abandoned cases)
SOUTH DAKOTA	S.D. Comp. Laws Ann. §§25-5, 25-5A, 26-8
TENNESSEE	*Smith v. Edmiston,* 431 F.Supp. 941 (1977) (Holds that right to counsel for indigent parent is guaranteed in dependency and neglect proceedings. Unclear if this ruling applies to termination of parental rights proceedings)
TEXAS	Tex. Fam. Code Ann. §§15.01 to 15.07 (Supp. 1980)
UTAH	Utah Code Ann. §55-10-96
VERMONT	Vt. Stat. Ann. tit. 33, §653 (Supp. 1980)
VIRGINIA	Va. Code Ann. Art. 3 §§16.1-158 to 16.1-193 (1980)
WASHINGTON	Wash. Rev. Code Ann. §13.34.090 (Supp. 1979)
WEST VIRGINIA	*State ex rel. Lemaster v. Oakley,* 203 S.E.2d 140 (W. Va. Sup. Ct. of App. 1974) *United States of America ex rel. Reed v. Tinder,* Civil Action No. 75-0454 (D. W. Va. 1975)

WISCONSIN	Wis. Stat. Ann. §48.42(4)(c) (Supp. 1980) (West)
WYOMING	Wyo. Stat. Ann. §§14-53 to 14-58